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DE RUEHBO #1751/01 1521135
ZNR UUUUU ZZH
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FM AMEMBASSY BOGOTA
TO RUEHC/SECSTATE WASHDC PRIORITY 8980
RUEHBR/AMEMBASSY BRASILIA 8932
INFO RUEHBR/AMEMBASSY BRASILIA PRIORITY 8933
RUEHCV/AMEMBASSY CARACAS PRIORITY 2299
RUEHLP/AMEMBASSY LA PAZ JUN 0143
RUEHPE/AMEMBASSY LIMA PRIORITY 7603
RUEHQT/AMEMBASSY QUITO PRIORITY 8303
RUEHGL/AMCONSUL GUAYAQUIL PRIORITY 4908
RUEHC/DEPT OF LABOR WASHDC PRIORITY
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RHMFISS/HQ USSOUTHCOM MIAMI FL PRIORITY
RUEAIIA/CIA WASHDC PRIORITY

UNCLAS BOGOTA 001751

SIPDIS

E.O. 12958: N/A
TAGS: [ELAB](#) [PGOV](#) [PHUM](#) [PREL](#) [SOCI](#) [CO](#)
SUBJECT: POINTS OF CONTENTION IN COLOMBIAN LABOR LAW

REF: A. BOGOTA 3629
[1](#)B. BOGOTA 4125
[1](#)C. BOGOTA 1544

SUMMARY

[1](#)1. (U) Unionists claim Colombian labor laws prevent workers from exercising their basic rights to associate, negotiate, and strike. They want the GOC to repeal or modify Article 5 of the Substantive Labor Code (CST), which limits the definition of a "worker" to someone with a labor contract; Article 450 of the CST, which states companies may fire unionists who participate in illegal strikes; Law 1210, which fails to define "essential public services" and restricts the scope of strikes; and Law 1233, which purports to level the playing field between Associated Worker Cooperatives (AWC) and direct employment. GOC and private sector representatives counter that good labor law and policy require a balance of protections for both workers and employers. The GOC and business community oppose unionists' proposed changes, arguing that they would drive up costs and reduce formal sector employment. End Summary

WORK CODE LIMITS THE RIGHT TO ASSOCIATE

[1](#)2. (U) Unionists told us that Article 5 of the Substantive Work Code (CST) bars 89 percent of the workforce from joining unions or professional associations because it defines a "worker" as someone with an employment contract. An employment contract must include three points: a dependent employer-worker relationship, defined duties and responsibilities, and remuneration. Unionists want lawmakers to repeal or modify Article 5 to expand the definition of a "worker" to cover a greater percentage of the workforce. Sixty percent of working Colombians are engaged in the informal sector, while 15% work as members of AWCs or other types of cooperatives. Apprentices or short-term service contractors account for 2%, and 12% are unemployed. Unionists argue that CST Article 5 conflicts with Articles 38-39 of the Constitution guaranteeing the right of association and prevents full compliance with ILO Convention [1](#)87.

[1](#)3. (U) Alberto Echavarria, Vice President of the National Association of Industries (ANDI), argues against expanding the definition of a worker. He said while AWC members and

others without work contracts cannot join unions, they may "link" informally with whatever entities they choose, including labor unions and confederations. Manuel Gaitan, a lawyer from the Ministry of Social Protection (MPS) Directorate General for Work Inspection, Surveillance, and Control, said the Colombian economy is evolving away from traditional employer-worker relationships to become more dynamic and competitive. AWCs are just one of the many necessary components that allow Colombian companies to compete internationally and create formal sector jobs. He added that it would be impossible to repeal or modify Article 5 due to business opposition.

WORK CODE, THREATS LIMIT THE RIGHT TO NEGOTIATE

¶4. (U) Unionists said the CST provision limiting union membership to workers with employment contracts also means collective bargaining is illegal for most workers in violation of ILO Conventions 98, 151, and 154. The Solidarity Center's Guarnizo said CST provisions that guarantee collective bargaining rights and enumerate the rules of engagement only apply to workers who have the right to join unions (the 10.5% with employment contracts). By law, the rest may not initiate or participate in collective bargaining processes. National Union School (ENS) Director Jose Luciano Sanin, added that even workers with employment contracts often refuse to participate in collective bargaining due to anti-union threats, intimidation, and propaganda. Guarnizo said only one million of the two million workers with employment contracts currently benefit from collective bargaining agreements.

¶5. (U) Echavarria and Gaitan told us union claims are exaggerated. Many non-union workers also benefit from collective bargaining agreements. They said that under CST Article 471, whenever a union includes more than one-third of the total number of workers in a company, the negotiated terms automatically extend to all workers whether unionized or not. Additionally, Article 472 stipulates that whenever a union includes more than two-thirds of the workers in an industry, the government may extend the collective bargaining agreement to businesses industry-wide. . Echavarria and Gaitan confirmed that neither law applies to AWC members who are not considered "workers" under Colombian labor law.

LAW 1210 FAILS TO DEFINE ESSENTIAL PUBLIC SERVICES

¶6. (U) Law 1210 transferred jurisdiction for determining strike legality from the MPS to the court system, and made arbitration voluntary after 60 days. Unionists welcomed these changes for bringing Colombian labor law into greater compliance with ILO conventions and for mitigating their concerns over a pro-business bias in the MPS. Still, they criticized Law 1210 for failing to adequately define "essential public services" or "minimal service provision" during public-sector strikes. Sanin told us this lack of clarity creates a near-total prohibition on public-sector strikes.

¶7. (U) Echavarria argued that Colombian labor law fully complies with international conventions and recommendations on "essential public services," which the ILO defines as industries in which strikes would endanger citizens' "lives, health, or security." To his knowledge, very few countries have defined the concept to the level of detail Colombian unionists advocate--explicitly legislating which sectors, or even parts of sectors, are "essential." Gaitan said it would be too difficult to incorporate these ideas into Colombian labor law, because it could undermine national security. Katherine Bermudez, National Coordinator for the ILO Fundamental Rights Project in Colombia, said Congress left these concepts open to interpretation precisely to ensure GOC flexibility.

LAW 1210 LIMITS SCOPE OF STRIKES

¶8. (U) Unionists also complain that Law 1210 defines a strike as a point in the collective bargaining process, such that only "workers" as defined by CST Article 5 may initiate

or participate. Rhett Doumitt, Regional AFL-CIO Representative, told us that all workers, with or without employment contracts, should be able to strike outside the collective bargaining process on issues such as job safety. Unionists further criticize Law 1210 for failing to grant confederations and federations the right to strike and for prohibiting solidarity strikes in support of an ongoing strike in another company.

¶9. (U) Echavarria said chaos would ensue were strikes allowed outside of the collective bargaining process. The current restriction is designed to provide labor an avenue for pursuing better conditions and protections while protecting businesses from politically motivated strikes. Gaitan said it makes sense that confederations and federations may not call a strike, because they are not directly party to collective bargaining agreements with companies.

CST ARTICLE 450 ALLOWS COMPANIES TO FIRE UNIONISTS

¶10. (U) Unionists also called for the repeal of CST Article 450, which allows companies to dismiss without judicial due process anyone who intervened or participated in a strike that the courts have ruled illegal. Guarnizo and Sanin said that this creates a major disincentive to strike even among workers legally qualified under CST Article 5. Echavarria said Article 450 only creates a disincentive against illegal strikes, and that any good labor law must contain a balance of protections for both companies and unions. Gaitan said the grounds for declaring a strike illegal are limited to failure to comply with simple procedural rules within the collective bargaining process that are easy to follow.

LAW 1233 PERPETUATES A WORKER UNDERCLASS

¶11. (U) Law 1233 (July 2008) requires AWCs to pay the legal minimum wage and non-wage benefits (health benefits, worker's compensation, and pensions) to their members, thereby leveling the playing field between AWCs and direct employment. Still, unionists say the law continues to allow firms to reduce labor costs and replace union members who can collectively bargain with AWC members who cannot. Doumitt explained that under the law AWC members are considered part owners, not workers, which allows AWCs (or the companies who control them) to require their members to pay their own non-wage taxes out of their earnings. This translates into reduced take-home pay for the approximately two million AWC members. Doumitt said AWC members typically earn half of what a similarly-employed union member makes.

¶12. (U) Sanin pointed to recent problems among workers in the palm and sugar cane sectors (see reftel A), conflict at the Port of Buenaventura (see reftel B), and the general labor environments in superstores, the apparel industry, floriculture (see reftel C), and the health sector as proof that AWCs bring about a rapid deterioration in employment conditions wherever they exist. He said their substantially lower costs and diluted labor rights have combined to make them the "new model of labor relations" in Colombia, as evidenced by their proliferation. The Superintendent for Economic Solidarity has registered about 4 million cooperative members. Doumitt explained that about half of these are members of "legitimate" cooperatives in which the members exercise real control over the enterprise. The remaining two million are AWC members.

¶13. (SBU) Echavarria said AWCs are viable institutions with a history in Colombia that predates the current controversy, and that many industries organize and manage them well. Still, he conceded that in some industries they have become a tool for abusing workers' rights. He said ANDI encourages its members not to use them, and advises any who do to monitor them closely. The MPS's Gaitan said they are an important component of a flexible, competitive economy. Moreover, many economists point to the high non-wage costs (approximately 80% of salary) as a reason for Colombia's large informal sector. Gaitan also said the numbers of

reported AWC members are inflated, or at least that MPS inspectors cannot locate the purported 2 million AWC members.

Still, he recognized that they lower employees' wages and other benefits.

Brownfield